

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CHARLES B. ERWIN,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant and	)	1:06CV59
Third Party Plaintiff,	)	
v.	)	
	)	
STEPHEN C. COGGIN, WILLIAM G.	)	
PINTNER, JAMES BARRY LIGHT,	)	
HARTSELL B. LIGHT, JR.,	)	
	)	
Third Party	)	
Defendants.	)	

ORDER

Beaty, Chief Judge.

This matter is before the Court on the Recommendation from the United States Magistrate Judge [Document #55] granting summary judgment in favor of the United States for unpaid payroll withholding taxes owed by GC Affordable Dining, Inc. ("GCAD"), a corporation in which Plaintiff was a shareholder, pursuant to 26 U.S.C. § 6672. Plaintiff brought suit against the United States for the recovery of tax penalties assessed against him. The United States filed a Counterclaim against Plaintiff for a trust fund recovery penalty, plus interest, in the amount of \$264,579.00, representing the payroll taxes required to be withheld from GCAD employees' wages during four quarters: the third quarter of 1998 and the first, second, and third quarters of

1999. The United States subsequently filed a Third-Party Complaint against Stephen C. Coggin (“Coggin”), William G. Pintner (“Pintner”), James Barry Light (“B. Light”), and Hartsell B. Light, Jr. (“H. Light”) alleging the same claims alleged against Erwin [Document #9]. On September 19, 2007, the United States filed a Motion for Summary Judgment against Erwin on his claims as well as its counterclaims against Erwin [Document #45]. Erwin then filed a cross Motion for Summary Judgment against the United States on its counterclaims against him [Document #46]. On November 27, 2007, Magistrate Judge Dixon recommended that the Court deny Erwin’s Motion for Summary Judgment and grant the United States’ Motion for Summary Judgment [Document #55].

Within the time provided by 28 U.S.C. § 636, Counsel for Plaintiff objected to the Recommendation. This Court reviewed de novo the Objections and the portions of the Magistrate Judge’s Recommendation to which objection was made, and has made a determination which is in accord with the Magistrate Judge’s decision. The Court will therefore adopt the Magistrate Judge’s Recommendation.

Consequently, the Court will order that Plaintiff’s Motion for Summary Judgment be denied, and that the United States Motion for Summary Judgment against Plaintiff Charles B. Erwin be granted. As a result of this determination, Plaintiff Erwin’s claims against the United States will be dismissed and judgment will be entered in favor of the United States on its

counterclaims against Plaintiff Erwin.<sup>1</sup>

Because all claims by and against Plaintiff Erwin have now been resolved, the only remaining claims are those claims brought by the United States against the Third Party Defendants, Stephen C. Coggin, William G. Pintner, James Barry Light, and Hartsell B. Light, Jr. However, the United States has filed a Motion pursuant to Federal Rule of Civil Procedure 54(b) for Entry of Final Judgment Against Plaintiff Erwin and a Motion to Stay further proceedings against the Third Party Defendants [Document #67]. Plaintiff Erwin and Defendants Pintner, B. Light and H. Light all consent.<sup>2</sup> Having considered this motion, the Court finds that all of the claims by and against Plaintiff Erwin have been resolved, but that the United States' claims against the Third Party Defendants in this case remain unresolved. The Court further finds that there is no just reason for delay of the entry of final judgment as to the claims by and against Plaintiff Erwin. Therefore, the United States' motion will be granted and

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<sup>1</sup> Plaintiff filed an action seeking a refund of tax penalties and related interest assessed to him under 26 U.S.C. § 6672. Because the reasoning of the Magistrate Judge's Recommended decision applies equally to the claims by Plaintiff Erwin against the United States and the counterclaims by the United States against Plaintiff Erwin, and because the Magistrate Judge recommended granting the United States' Motion for Summary Judgment in its entirety, all of Plaintiff Erwin's claims against the United States will be dismissed.

<sup>2</sup> The United States' motion anticipates that a notice of appeal will be filed by Plaintiff Erwin to the extent that Final Judgment is entered against him. Thus, in the interest of conserving judicial resources and preventing duplicative trials, the United States has requested that the Court enter Final Judgment as to Plaintiff Erwin, allowing him to immediately proceed with any appeal he may choose to file in this matter, and grant a Stay as to the proceedings against the Third Party Defendants pending the outcome of Plaintiff Erwin's appeal. To that end, the United States has represented to the Court that all parties have consented in the motion.

final judgment as to Plaintiff Erwin pursuant to Rule 54(b) will be entered contemporaneously herewith. Further, the Court concludes that a Stay as to the United States' claims against the Third Party Defendants in this case is appropriate pending final resolution of any appeal by Plaintiff Erwin.

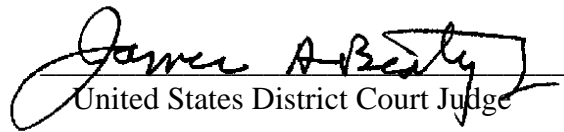
IT IS THEREFORE ORDERED that the Recommendation of the United States Magistrate Judge in this matter issued on November 27, 2007, [Document #55] is hereby ADOPTED. IT IS FURTHER ORDERED that in accordance with the Magistrate Judge's Recommendation, Plaintiff Charles B. Erwin's Motion for Summary Judgment [Document #46] is DENIED. IT IS FURTHER ORDERED that the United States' Motion for Summary Judgment against Plaintiff Charles B. Erwin [Document #45] is GRANTED, and Plaintiff Erwin's claims against the United States are hereby DISMISSED with prejudice. A Judgment in favor of the United States on its counterclaims against Erwin will be entered contemporaneously herewith.

Having resolved all claims by and against Plaintiff Erwin, IT IS FURTHER ORDERED that the United States Motion for Entry of Final Judgment Against Plaintiff Erwin pursuant to Rule 54(b) [Document #67] is GRANTED.

FINALLY, IT IS ORDERED that this case is STAYED as to the United States' claims against Third Party Defendants, Stephen C. Coggin, William G. Pintner, James Barry Light, and Hartsell B. Light, Jr., pending resolution of any appeal by Plaintiff Erwin. If no appeal is filed, the United States shall have 30 days following the expiration of the deadline for filing a notice

of appeal to file a request with this Court to lift the Stay. If, however, Plaintiff Erwin pursues an appeal of the Judgment entered by this Court, the United States shall have 30 days from the date of entry of Judgment by the Fourth Circuit Court of Appeals to file a request with this Court to lift the Stay.

This the 18 day of March, 2008.

  
United States District Court Judge